

REMARKS:

Claims 1-8 and 10-12 are in the case and presented for consideration.

The claims have been amended throughout to improve their form to conform more closely to U.S. patent practice. In particular, sections of different scope within the same claim have been eliminated. Although the Examiner did not object to these, the changes were made in any case since they render the claims more consistent with 35 U.S. C. 112(2).

Turning to the office action, the Examiner has rejected claim 9 as being fully anticipated by either Stewart or Almeda. Claim 1 has been amended to incorporate the subject matter of claim 9. Accordingly, these two rejections remain relevant to considering new claim 1.

Turning first to Almeda, Almeda is clearly not a sheet element having a concave surface and a convex surface. While it may include a sheet element, its concave surface is embedded within the box like structure of the device and can not be accessed. There is certainly no possibility or rational for including a slip-resistant characteristic to the concave surface as now called for in claim 1, so that the claims are believed patentable over this reference.

Turning now to Stewart, firstly, it is not clear that the arch or curve of Stewart is at least 30 degrees. The arch appears to be somewhat less than this amount. Further, however, although the inner concave surface of Stewart is designed to be slip-resistant by virtue of the inclusion of an abrasive coating 24 as shown in Fig. 4 of this reference, the opposite concave surface referred to as a bottom surface 12 by Stewart is clearly not meant to include a damping layer of elastimeric material or other damping substance, since

this would impart a high level of friction to this surface and, thus, counteract the desired effect of Stewart, which is to produce forward locomotion when the device of Stewart is rocked from side to side and, at the same time, pivoted in a forward direction. See Fig. 3 of Stewart and the description starting on column 2, line 44 of Stewart, where it is explained that the user rocks to one side and then pivots to move an increment in the forward direction and then rocks the other way and then pivots again, to again move in the forward direction. The pivoting action will clearly be thwarted by the damping material. It has been held that a modification to a reference which defeats the reference's purpose can not be an obvious modification.

Accordingly, claim 1 and the claims which depend therefrom and are believed to further distinguish the invention over the prior art of Stewart and Almeda, are believed to be patentable over these two references.

During the prosecution of the corresponding European application, two new German references were cited. Attached please find a form 1449 listing these two references, which are German patent document DE 202 03 975 and DE 202 00 585.

Neither of these references, which are both relevant for their teaching of an exercise device having an arcuate sheet member, has a convex damping surface, again, because they both intend on producing both pivoting and rocking movement to produce forward motion and, thus, locomotion as contemplated also by Stewart. Accordingly, these references are believed no closer to claim 1 and the claims dependant therefrom, than the Stewart and Almeda references.

The Examiner is also requested to consider the following secondary considerations.

A product corresponding to this application has been marketed under the trademark

T-BOW. Attached please find a brochure disclosing the invention. The invention has been shown at a sports exhibition in Munich, known as the ISPO, beginning in February 2006 and was awarded a prize at the ISPO brand new awards election.

The brochure also illustrates how the invention is utilized and how it takes advantage of the non-slip concave or inner surface, as well as, the convex or outer damping material surface, which is advantageous both when the device is used in its rocking position (concave surface down) or when it is used as a step or support (concave surface up).

This also highlights the significance of the various dimensions called for in the dependent claims, which are believed to further distinguish the invention over the prior art.

By this amendment, thus, the application and claims are believed to be in condition for allowance and favorable action is respectfully requested.

Favorable action is respectfully requested.

Respectfully submitted,



Peter C. Michalos
Reg. No. 28,643
Attorney for Applicants
(845) 359-7700

Dated: September 21, 2006

NOTARO & MICHALOS P.C.
100 Dutch Hill Road, Suite 110
Orangeburg, New York 10962-2100

Customer No. 21706